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JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1695

In the Supreme Court**OF THE
United States**

OCTOBER TERM, 1985

**SOCIETE NATIONALE INDUSTRIELLE AEROSPATIALE AND
SOCIETE DE CONSTRUCTION D'AVIONS DE TOURISME,
*Petitioners,***

VS.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IOWA,
*Respondent.*****(DENNIS JONES, JOHN and ROSA GEORGE,
Real Parties in Interest)****On Writ of Certiorari
To The United States Court of Appeals
For the Eighth Circuit****JOINT APPENDIX****JOHN W. FORD*
LAWRENCE N. MINCH
WILLIAM L. ROBINSON
LILLICK MCHOSE & CHARLES
Two Embarcadero Center
San Francisco, CA 94111
(415) 984-8200
*Attorneys For Petitioners*****VERNE LAWYER*
RICHARD H. DOYLE IV
Law Offices of
Verne Lawyer & Associates
427 Fleming Building
Des Moines, IA 50309
(515) 288-2213
*Attorneys For Respondents,
Real Parties in Interest
John and Rosa George*****ROLAND D. PEDDICORD*
THOMAS C. FARR
PEDDICORD AND
WHARTON, P.C.
300 Fleming Building
Des Moines, IA 50309
(515) 243-2100
*Attorneys For Respondent,
Real Party In Interest
Dennis Jones******Counsel of Record****August 22, 1986**

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In the United States District Court
For the Southern District of Iowa
Central Division

Civil No. 82-453-C

Dennis F. Jones,
Plaintiff,

vs.

Societe Nationale Industrielle Aerospatiale,
a French corporation; et al.
Defendants.

Civil No. 82-615-A

John George and Rosa George,
Plaintiffs,

vs.

Seed & Grain Construction Co., an Iowa corporation; et al.,
Defendants.

Motion for Protective Order

COME NOW the Defendants, Societe Nationale Industrielle Aerospatiale and Societe De Construction d'Avions De Tourisme, and pursuant to Federal Rule of Civil Procedure 26(c), request that the Court enter an Order that discovery may be had from these Defendants only upon certain specified terms and conditions, for the following reasons:

1. Plaintiffs John George and Rose (sic) George and Dennis Jones, have filed requests for admissions, interrogatories and requests for production of documents directed to these Defendants.

2. These Defendants are French corporations and therefore, Defendants request that the Court order the Plaintiffs to comply with the Hague Convention in seeking discovery from these Defendants.

3. Both France and the United States are signatories to the Hague Convention and since its enactment in 1970, the Hague

Convention has dictated the procedure in which a party may seek discovery from a foreign national in a foreign nation. Plaintiffs here seek discovery from Defendants, French corporations, and the discovery sought can only be found in a foreign state, namely, France.

4. Under French penal law, Defendants may only respond to discovery requests which comply with the Hague Convention. French Penal Code Law No. 80.538 Article 1a, enacted July 16, 1980.

5. For the foregoing reasons, Defendants request that the Court enter an order requiring that Plaintiffs comply with the Hague Convention in seeking discovery from these Defendants.

WHEREFORE, Defendants Societe Nationale Industrielle Aerospatiale and Societe De Construction d'Avions De Tourisme, pray that the Court enter a protective order in the particulars set forth above.

/s/ MARSHA TERNUS

1100 Des Moines Building

Des Moines, IA 50307

(515) 243-4191

Attorneys for Defendants

Societe Nationale

Industrielle Aerospatiale

and Societe De Construction

d'Avions De Tourisme

In The United States District Court
For the Southern District of Iowa
Central Division

Civil No. 82-453-C
Consolidated

Dennis F. Jones,
Plaintiff,

vs.

Societe Nationale Industrielle Aerospatiale,
a French corporation; et al.
Defendants.

Civil No. 82-615-A

John George and Rosa George,
Plaintiffs,

vs.

Seed & Grain Construction Co.,
an Iowa corporation; et al.,
Defendants.

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BRIEF POINT I

THE HAGUE CONVENTION ON THE TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS, BEING A TREATY RATIFIED BY THE CONGRESS OF THE UNITED STATES AND TO WHICH FRANCE IS A PARTY, IS THE SUPREME LAW OF THE UNITED STATES AND BARS THE DISCOVERY TECHNIQUES EMPLOYED BY THE PLAINTIFFS.

The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, *done* March 18, 1970, 23 U.S.T., 2557, T.I.A.S. No. 7444 (hereinafter referred to as the "Hague Convention"), was entered into force for the United States on October 7, 1972. France is one of the signatory countries to the Convention. (The text of the 1970 Hague Convention and a list of its signatory parties are attached as Exhibit A). The Hague Convention provides for three methods of obtaining evidence from individuals or corporations abroad: (1) designation of a private commissioner, (2) notice to appear before an American consulate officer or a foreign officer, or (3) letters rogatory. *Pain v. United Technologies Corp.*, 637 F.2d 775, 778 n.67 (1980), *cert. denied*, 454 U.S. 1128 (1981). The purpose of the Hague Convention is "to facilitate the transmission and execution of letters of request" and "to improve mutual judicial cooperation in civil or commercial matters." See Hague Convention, initial unnumbered paragraphs 2, 3.

As a treaty, the Convention takes precedence over other law. Article VI, paragraph 2 of the United States Constitution provides in pertinent part as follows:

[A]ll treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Because the Hague Convention is a treaty to which both the United States and France are signatories, the Convention is applicable to the present case, it is the supreme law of the United States, and federal courts are bound to abide by its terms under

article VI, paragraph 2 of the United States Constitution. The Hague Convention governs discovery by United States citizen plaintiffs from foreign individuals or corporations. See *Renfield Corp. v. E. Remy Martin & Co.*, 98 F.R.D. 442, 443 (D. Del. 1982) (stating, in a case involving a French defendant, that the Hague Convention governs the discovery of any documents located in France). Since Plaintiffs' discovery requests do not comport with the requirements of the Hague Convention, they are improper and the Court should enter a protective order specifying that this and all further discovery during the pendency of this litigation be sought in accordance with the methods provided by the Hague Convention.

BRIEF POINT II

EVEN IF THE COURT DOES NOT READ THE HAGUE CONVENTION AS PREEMPTING THE DISCOVERY METHODS PROVIDED BY THE FEDERAL RULES OF CIVIL PROCEDURE, PRINCIPALS OF INTERNATIONAL COMITY, COURT EFFICIENCY, AND JUSTICE REQUIRE THAT PLAINTIFFS BE ORDERED TO PURSUE DISCOVERY IN ACCORDANCE WITH THE PROCEDURES SPECIFIED IN THE HAGUE CONVENTION.

The majority of courts which have had occasion to consider the issue have decided that even if the Hague Convention cannot be read to preempt rules of civil procedure relating to discovery in actions involving alien corporations, the discovery procedures provided by the Convention should be followed, at least until it becomes apparent that a foreign government will refuse the requested discovery. See *Schroeder v. Lufthansa German Airlines*, 18 Av. Cas. 17,222 (N.D. Ill. 1983); *Philadelphia Gear Corp. v. American Pfauter Corp.*, 100 F.R.D. 58 (E.D. Pa. 1983); *Pierburg GMBH & Co. v. Superior Court*, 137 Cal. App. 3d 238, 186 Cal. Rptr. 876 (Ct. App. 1982); *Volkswagenwerk Aktiengesellschaft v. Superior Court*, 123 Cal. App. 3d 840, 176 Cal. Rptr. 874 (Ct. App. 1982); *Gebr. Eickhoff M.U.E. v. Starcher*, 328 S.E.2d 492 (W. Va. Ct. App. 1985); see also *Pain v. United Technology Corp.*, 637 F.2d 775 (D.C. Cir. 1980), *cert. denied*.

454 U.S. 1128 (1981) (holding the same in the context of discovery requests to nonparties).

The *Pierburg* case is particularly instructive on this point, in that it reviewed prior case law, concluding that the "consistent approach of federal courts is to view the Hague Evidence Convention as compelled by comity". *Pierburg GMBH & Co. v. Superior Ct.*, 137 Cal. App. 3d 238, 243, 186 Cal. Rptr. 876 (Ct. App. 1982). The concept of international comity is that:

Courts of one sovereign state should not, as a matter of sound international relations, require acts or forbearances within the territory, and inconsistent with the internal laws of another sovereign state unless a careful weighing of competing interest and alternative means makes clear that the order is justified.

Murphy v. Reifenhauer KG Maschinenfabrik, 101 F.R.D. 360 (D. Ver. 1984). The rationale underlying the requirement that the Hague Convention be followed was best expressed by the United States District Court for the Eastern District of Pennsylvania in *Philadelphia Gear Corp. v. American Pfauter Corp.*, 100 F.R.D. 58 (E.D. Pa. 1983). In that case the plaintiff filed a motion to compel one of the defendants, a German corporation, to answer interrogatories and produce documents requested by the plaintiff. The court denied the motion on the basis that the discovery requests did not comport with the procedures provided by the Hague Convention. The court ordered the plaintiffs to seek discovery under the Convention, stating:

The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters is a multilateral treaty that was designed to provide a uniform procedure to be used in obtaining evidence in foreign countries. A central purpose of the convention was to reconcile the markedly different discovery procedures that exist in common law countries, such as the United States, and civil law countries, such as West Germany. For example, unlike the practice in this country where depositions are conducted by attorneys outside the presence of the court, in civil law countries depositions are a function of the judiciary. The interrogation of witnesses is by

the judge and although counsel may suggest questions, no direct questioning or cross examination is permitted. At the close of testimony, the judge dictates a non-verbatim summary which is the official record of the proceeding. See Jones, *International Judicial Assistance: Procedural Chaos and a Program for Reform*, 62 Yale L.J. 513, 527-29 (1953). Note, *Obtaining Testimony Outside the United States*, 29 Hastings L.J. 1237, 1247 (1978). Because the gathering of evidence is a function of a civil law country's courts, the usurpation of this function by the courts and citizens of a foreign nation may be considered a violation of the state's judicial sovereignty." See *Volkswagenwerk Aktiengesellschaft v. Superior Court*, 123 Cal. App. 3d 840, 852, 176 Cal. Rptr. 874, 881 (1981).

In order to avoid such intrusions and to provide an orderly system for foreign discovery, the United States and West Germany became signatories to the Hague Evidence Convention. Under the convention, three methods of obtaining evidence abroad may be used: notice to appear before a consular officer (Arts. 15, 16); the designation of a private commissioner (Art. 17); or a letter of request (Arts. 1-14) . . . In the present case, plaintiff has made no effort to comply with the Hague Evidence Convention. Instead, it argues that this treaty does not represent the exclusive means of gathering evidence abroad but rather was intended merely to supplement the less restrictive means provided by the Federal Rules of Civil Procedure. In support of this assertion, plaintiff points to Article 27 of the convention which states in part that "the provisions of the present Convention shall not prevent a Contracting State from— . . . permitting, by internal law or practice, methods of taking evidence other than those provided for in this Convention."

I disagree with plaintiff's contention. While the language of Article 27 is not conclusive, when this section is viewed in light of the underlying policies it permits only the country in which the evidence is being sought to supplement unilaterally the convention procedures with its internal rules. To allow the forum court to supplement the convention with its

own practices would not promote uniformity in the gathering of evidence nor generate a spirit of cooperation among signatories to the treaty. Instead, each state would be free to replace the convention procedures with its own practices at will. Obviously, to permit one sovereign to foist its legal procedures upon another whose internal rules are dissimilar would run afoul of the interests of sound international relations and comity. See *Pierburg GMBH & Co. KG v. Superior Court*, 137 Cal. App. 3d 238, 244, 186 Cal. Rptr. 876, 881 (1982); *Volkswagenwerk Aktiengesellschaft v. Superior Court*, 123 Cal. App. 3d 840, 857, 176 Cal. Rptr. 874, 884 (1981).

More recently, the United States Supreme Court has hinted at the correctness of the conclusions reached by the courts in cases such as *Philadelphia Gear*. In a ruling issued April 19, 1983 in *Volkswagenwerk A.G. v. Falzon*, 461 U.S. 1303 (1983), the United States Supreme Court stayed the taking of foreign depositions in a case against a German corporate defendant even though the discovery had been ordered by the lower courts and the Supreme Court in Michigan. The defendant therein, as do the French Defendants herein, argued that plaintiffs' intended deposition method violated the Hague Convention. The Supreme Court twice ordered the stay. In its second opinion and order the Court indicated that there was a significant likelihood of success on the merits of the defendant's Hague Convention argument.

Plaintiffs place great reliance in their brief on the recent Fifth Circuit case of *In re Anschuetz & Co.*, 754 F.2d 602 (5th Cir. 1985). Yet in *Anschuetz* the circuit court recognized that principles of comity are important in fashioning discovery procedure:

Of course, to say what is proper and permitted as an exercise of power by an American court acting under the federal rules is not necessarily to say that such a power should always be employed. Particularly in the realm of international discovery we believe the exercise of judicial power should be tempered by a healthy respect for the principles of comity.

In re Anschuetz & Co., 754 F.2d 602, 614 (5th Cir. 1985). It is also significant to note that the circuit court did not order discovery pursuant to the federal rules but rather instructed the district court to reconsider its prior orders permitting discovery without compliance with the Hague Convention in light of the principles stated in the circuit court's opinion. Furthermore, counsel for Defendants has been informed by Robert Dietz, attorney for the German defendant in *Anschuetz*, that the defendant has applied for a writ of certiorari from the United States Supreme Court.

Just as in the *Philadelphia Gear* case and in the other cases cited in this brief, principles of international comity and judicial restraint require the Court to order the Plaintiffs herein to pursue discovery in accordance with the procedures of the Hague Convention. The comity issue is particularly relevant to the instant case: the relative burden on Plaintiffs to comply with the Hague Convention pales in light of the burden placed on SNIAS should Plaintiffs' discovery requests be granted. Plaintiffs would simply have to comply with the Convention; as further discussed below, SNIAS would be placed in a position of possibly violating its own domestic law. Consequently, because Plaintiffs' discovery requests do not comply with the Hague Convention, they should not be permitted.

BRIEF POINT III

UNDER FRENCH PENAL LAWS, SNIAS MAY ONLY RESPOND TO DISCOVERY REQUESTS WHICH COMPLY WITH THE HAGUE CONVENTION

French Penal Code Law No. 80-538, enacted July 16, 1980, prohibits any French national or resident from distributing any commercial information to any foreign public entity and prohibits any foreigner from requesting such information, unless such information is sought pursuant to "treaties or international agreements and applicable laws and regulations". French Penal Code

Law No. 80-538 Article 1 *bis*.¹ Law No. 80-538 was specifically intended to require that all discovery in foreign proceedings follow the Hague Convention procedures: "Article 1 *bis* was intended to oblige parties to foreign litigation to comply with the Hague Convention and applicable French laws." Toms, *The French Response to the Extra Territorial Application of United States Anti-Trust Laws*, 15 Int'l Law 585, 598 (1981).

Placing SNIAS in the uncomfortable position of breaking French law in order to comply with a rule of civil procedure in this country is unreasonable, particularly because SNIAS is authorized to respond to discovery pursuant to the terms of the Hague Convention. Defendant SNIAS should not be placed in the untenable position of having to choose between violating French penal law and violating an order of this Court. *Cf. Laker Airways Ltd. v. Pan American World Airways*, 607 F. Supp. 324 (S.D.N.Y. 1985). All Plaintiffs need do is follow the procedures of the Hague Convention, which were established precisely to resolve situations such as this, and the legitimate interests of all parties will be protected.

¹ A true and correct copy of the French Law No. 80-538 is attached hereto as Exhibit B. The complete text Article 1 *bis* is as follows:

Subject to treaties or international agreements and applicable laws and regulations, it is prohibited for any party to request, seek or disclose in writing, orally, or otherwise, economic, commercial, industrial, financial or technical documents or information leading to the constitution of evidence with a view to foreign judicial or administrative proceedings, or in connection therewith.

CONCLUSION

The Hague Convention, an international treaty in force between the United States and France, establishes the procedures for obtaining discovery abroad from a foreign party. It also provides the only means by which SNIAS can comply with Plaintiffs' discovery requests without violating French domestic law. Principles of fairness and comity, if not the supremacy clause of the United States Constitution, require that Plaintiffs utilize the procedures of the Convention in requesting discovery from SNIAS.

BRADSHAW, FOWLER,
PROCTOR & FAIRGRAVE

By /s/ MICHAEL H. FIGENSHAW

By /s/ MARSHA K. TERNUS

1100 Des Moines Building
Des Moines, Iowa 50307
(515) 243-4191

*Attorneys for Defendants
Societe Nationale Industrielle
Aerospatiale and Societe
De Construction d'Avions
De Tourisme*

In The United States District Court
For the Southern District of Iowa
Central Division

Civil No. 82-453-C

Dennis F. Jones,
Plaintiff,

vs.

Societe Nationale Industrielle Aerospatiale,
a French Corporation; and
Societe De Construction d'Avions De Tourisme,
a French Corporation,
Defendants.

Civil No. 82-615-A

John George and Rose (sic) George,
Plaintiffs,

vs.

Seed & Grain Construction Co.,
an Iowa Corporation;
Dennis Jones, Charles V. Frederick,
Societe National Industrielle Aerospatiale,
a French Corporation,
Defendants.

Resistance to Motion for Protective Order and
Request for Oral Argument

COME NOW the Plaintiffs, Dennis Jones (Jones), John George (John) and Rosa George (Rosa), and for their Resistance to Defendants Motion for Protective Order pursuant to Rule 26(c) Federal Rules of Civil Procedure, state that:

1. Plaintiffs served Summons upon the Defendants as required by the Federal Rules of Civil Procedure and that Returns of Services are on file in this case verifying the fact that the Defendants were properly served as required.

2. Defendants, after being served in this case filed a General Appearance and Answer without contesting this Court's jurisdiction; either *in personam* or subject matter.

3. Defendants are now, and were at the time of the accident giving rise to this lawsuit, engaged in the advertising and selling of aircraft and their component parts in the stream of commerce in the United States (See attached Exhibit "A" advertising such business in a trade journal), and pursuant thereto the Defendants have advertised the existence of and listed a telephone number for an office located in Washington, D.C., thus establishing their presence in the United States.

4. Defendants have proceeded under the Federal Rules of Civil Procedure prior to this time and have never denied their application or want of subject matter or *in personam* jurisdiction of this Court.

5. This Court has both *in personam* and subject matter jurisdiction over the parties and issues involved in this lawsuit. Specifically, the Defendants have filed a General Appearance and Answer, they have filed Interrogatories direct to each Plaintiff, filed Requests for Production on several occasions directed to each Plaintiff, they have deposed witnesses and parties pursuant to the Federal Rules of Civil Procedure and have requested the right to examine the wreckage, also pursuant to the Federal Rules.

6. As this Court has *in personam* jurisdiction it may order foreign nationals to comply with the federal rules as any other person subject to *in personam* jurisdiction would be required to proceed.

7. *In personam* jurisdiction nullifies the application of the Hague Convention as by its express terms and this country's interpretation it only applies to taking evidence abroad.

8. This is true even though information or documents required may be kept in a foreign jurisdiction.

9. For the foregoing reasons, Plaintiffs request that the Court not enter an order requiring that Plaintiffs comply with the Hague Convention in seeking further discovery from the Defendants.

10. For the foregoing reasons, Plaintiffs also request that the Court allow oral argument on the issue of whether the Plaintiffs should be required to proceed under the Hague Convention.

WHEREFORE, Plaintiff, Dennis Jones, John George and Rosa George, pray that this Court not enter a Protective Order as requested by the Defendants, and that Oral Argument be allowed on the issue of whether such an Order should be issued.

Respectfully submitted,

/s/ ROLAND D. PEDDICORD

Roland D. Peddicord
PEDDICORD & WHARTON
Suite 300, Fleming Building
218 Sixth Avenue
Des Moines, Iowa 50309
Attorney for Dennis Jones

/s/ VERNE LAWYER

Verne Lawyer
427 Fleming Building
Des Moines, Iowa 50309
*Attorney for John and
Rosa George*

In the United States District Court
For The Southern District of Iowa
Central Division

Civil No. 82-453-C

Dennis F. Jones,
Plaintiff,

v.

Societe Nationale Industrielle Aerospatiale,
a French Corporation;
and Societe De Construction d'Avions De Tourisme,
a French Corporation,
Defendants.

Civil No. 82-615-A

John George and Rose (sic) George,
Plaintiffs,

v.

Seed and Grain Construction Co.
an Iowa Corporation;
Dennis Jones, Charles V. Frederick,
Societe National Industrielle Aerospatiale,
a French Corporation,
Defendants.

Brief in Support of Resistance to Motion for Protective Order
and Request for Oral Argument

The Defendants in this action seek to avoid further discovery on the ground that they are foreign corporations subject to the jurisdiction of a Signatory of the Hague Convention. According to the Defendants this means that the Plaintiffs must proceed with all further discovery in this case pursuant to the terms and requirements of the Hague Convention.

The facts of this case are similar to those of *In Re Anschuetz & Co.*, 754 F.2d 602 (5th Cir. 1985), which involved a third-party suit against the manufacturer of a steering device alleged to have malfunctioned causing the collision of three ships. The third-party

defendants in *Anschuetz* moved for a Protective Order with regard to Interrogatories, Requests for Production and the taking of depositions. The initial motion in *Anschuetz* was not based on the Hague Convention. The subsequent motion was however based on the Hague Convention. The Court concluded that: "the Hague Convention does not supplant the application of the discovery provisions of the Federal Rules over foreign, Hague Convention state nationals, subject to *in personam* jurisdiction in a United States Court." *Anschuetz* at 604.

In reaching this decision the Fifth Circuit Court carefully analyzed existing precedent. *Id.* at 605-06. The Court noted that the view that the Hague Convention should be strictly applied arose out of two California cases based on California law and policy. *Id.* at 606. These two California cases, *Volkswagenwerk A.G. v. Superior Court*, 123 Cal. App.3d 238, 186 Cal. Rptr. 876 (1982) (sic) and *Pierburg GmbH & Co. v. Superior Court*, 137 Cal. App.3d 238, 186 Cal. Rptr. 876 (1982), did not base their decisions on legal requirements, but rather on notions of comity and judicial self-restraint. *Anschuetz*, at 606. According to the *Anschuetz* Court neither of these cases, or those following them, indicate that the Hague Convention strictly applied where the Court had *in personam* jurisdiction with regard to all of the parties. *Id.* The Court recognized that this would give foreign nationals an extreme advantage; they could seek discovery under the Federal Rules but other parties would have to proceed with discovery against them under the much more restrictive Hague Convention. *Id.* The Court therefore recognizes that the procedures allowed under the Hague Convention are not exclusive. *Id.* at 612.

Furthermore, it is well established that "[d]ocuments need not be in the possession of a party to be discoverable, they need only be in its custody or control." *Id.* at 607. Quoting, *Cooper Industries v. British Aerospace*, 102 F.R.D. 918, 919 (S.D.N.Y. 1984). In *Cooper* the plaintiff sought such things as service manuals and blueprints of aircraft. *Anschuetz*, at 607. The Court allowed the discovery as the documents all "relate[d] to the planes that [the] defendants work with every day..." and defendant could get them with no difficulty. *Id.* The Court also

stated that it is irrelevant that the documents are in another country. *Id.* This was due to the fact that the documents were to be produced in the United States and thus there was no violation of foreign sovereignty as the discovery did not take place in the foreign country (as was the situation in the two California cases cited earlier). *Id.*

The Court felt that "foreign parties and domestic parties are equally subject to the Federal Rules of Civil Procedure so long as personal jurisdiction is gained. *Id.* The only obstacle may be comity, but comity is not a binding obligation. *Id.* at 609. What is required is a balancing of interests in such cases. *Id.* The Hague Convention was not intended to shield foreign nationals from American judicial processes where the person does business in this country. *Id.* at 611. "[T]he Convention does not require deference to a foreign country's judicial sovereignty... when such documents are to be produced in the United States. *Id.* Discovery is considered to occur where the request is made not where the information is retained or necessarily gathered. *Id.* The gathering of documents and information is merely "preparatory" to discovery. *Id.* Such evidence is a crucial part of most cases and requiring compliance with the Hague Convention in every case would totally alter the way litigation in a multinational situation is conducted. *Id.* at 612. If the Convention were deemed the exclusive means of gathering evidence in such cases "foreign authorities [would be] the final arbiters of" the evidence their nationals could be compelled to provide. *Id.* Also, if the Convention were interpreted in this manner the foreign country could regulate the litigation "unilaterally". *Id.*

The Federal Rules were designed to, and do, give all parties before federal courts very expansive discovery rights. *Id.* at 614. This is not to say the Rules should always be strictly enforced because foreign jurisdictions must be respected. *Id.* This respect should be paid even though the Convention is not expressly exclusive (as is the Convention on Service). *Id.* The only time the Hague convention is exclusive is when the party is not subject to the Court's *in personam* jurisdiction. *Id.* It is not applicable at all if the evidence sought is sought in this country and sought of a party subject to the Court's *in personam* jurisdiction. *Id.*

The Court, in *Anschuetz*, gave the party the option of voluntarily producing the evidence in the foreign country or under threat of sanction in this country. *Id.* at 615. The same option should be available in this case, but the clear statement and holding of the law is that such evidence must be produced at one place or the other.

Furthermore, in light of the Defendant's extensive use of the Federal Rules of Civil Procedure as outlined in paragraph four (4) of the Resistance to Motion for Protective Order and Request for Oral Argument, and the United States hesitancy to allow such one-sided advantage, as is evidenced in *Anschuetz*, it is clear that the Defendants should not be allowed to make extensive use of the Federal Rules and then hide behind the Hague Convention. This is especially true when the Court considers that they have *in personam* jurisdiction over the parties as established above. Surely this is just the type of situation the Court foresaw in *Anschuetz* when they decided such an abuse could not be allowed. Therefore, the Defendants should be subject to the Federal Rules of Civil Procedure just as the Plaintiffs are.

As there seems to be a good deal of disagreement as to whether the Plaintiffs should be required to proceed under the Hague Convention, Oral Argument seems to be in order. Therefore, the Plaintiffs would also request that such Oral Argument be set in this case with regard to whether the Plaintiffs should be forced to proceed under the Hague Convention while the Defendants proceed under the full range of discovery allowed the Federal Rules of Civil Procedure.

Respectfully submitted,

/s/ ROLAND D. PEDDICORD

Roland D. Peddicord

PEDDICORD & WHARTON

Suite 300, Fleming Building

218 Sixth Avenue

Des Moines, Iowa 50309

Attorney for Dennis Jones

In the United States District Court
for the Southern District of Iowa
Central Division

Civil No. 82-615-A

John George and Rosa George,
Plaintiffs,

vs.

Seed & Grain Construction Co.,
an Iowa corporation; Dennis Jones; Charles V. Frederick;
Societe Nationale Industrielle Aero-Spatiale,
a French corporation;
and Societe de Construction d'Avions de Tourisme,
a French corporation;
Defendants.

Request for Production Directed to Defendant Societe National
Industrielle Aero-Spatiale and Societe de Construction
d'Avions de Tourisme (1st Set)*

COME NOW the Plaintiffs and pursuant to Federal Rules of Civil Procedure, Rule 34(b), hereby request the defendants, Societe Nationale Industrielle Aero-Spatiale and Societe de Construction d'Avions de Tourisme, and each of them, to produce for inspection and copying the following list of documents and things at the office of Verne Lawyer, 427 Fleming Building, Des Moines, Iowa 50309 during usual business hours within a reasonable time (not to exceed 30 days) after service of this document upon you.

1. Produce the applicable pilot's handbook for the S.O.C.A.T.A. Morane Saulnier 893E Rallye model aircraft, serial number 12451, F.A.A. registration number N96088, which is the subject of this lawsuit.

2. Produce the applicable flight manual for the S.O.C.A.T.A. Morane Saulnier 893E Rallye model aircraft, serial number 12451, F.A.A. registration number N96088, which is the subject of this lawsuit.

* Identical discovery request also served by plaintiff Dennis Jones.

3. Produce the performance data on the power required and power available and climb performance for the S.O.C.A.T.A. Morane Saulnier 893E Rallye model aircraft, serial number 12451, F.A.A. registration number N96088, which is the subject of this lawsuit.

4. Produce any and all records or data with regard to how the aircraft, the S.O.C.A.T.A. Morane Saulnier 893E Rallye model aircraft, serial number 12451, F.A.A. registration number N96088, was certified for flight in the United States and with the United States Registry.

5. Produce any and all records or data which proves the aircraft, the S.O.C.A.T.A. Morane Saulnier 893E Rallye model aircraft, serial number 12451, F.A.A. registration number N96088 met the requirements of Part 23 of the Code of Federal Regulations.

6. Produce any and all records or data with regard to any testing that was done pursuant to Part 23 of the Code of Federal Regulations.

7. Produce any and all records or data with regard to testing done by the F.A.A. on the S.O.C.A.T.A. Morane Saulnier 893E Rallye model aircraft, serial number 12451, F.A.A. Registration number N96088.

LAW OFFICES OF VERNE LAWYER

By /s/ VERNE LAWYER

Verne Lawyer

Fourth Floor Fleming Building

Des Moines, IA 50309

Telephone: (515) 288-2213

In the United States District Court
For the Southern District of Iowa
Central Division

Civil No. 82-453-C Consolidated

Dennis F. Jones,
Plaintiff,

vs.

Societe Nationale Industrielle Aerospatiale,
a French corporation; et al.
Defendants.

Civil No. 82-615-A

John George and Rosa George,
Plaintiffs,

vs.

Seed & Grain Construction Co.,
an Iowa corporation; Dennis Jones;
Charles V. Fredererick (sic);
Societe Nationale Industrielle Aerospatiale,
a French corporation;
and Societe de Construction d'Avions de Tourisme,
a French corporation;
Defendants.

Request for Admissions Directed to Defendants
Societe Nationale Industrielle Aerospatiale and
Societe de Construction d'Avions de Tourisme*

COME NOW Plaintiffs John George and Rosa George and pursuant to Federal Rule of Civil Procedure 36 request the defendants Societe Nationale Industrielle Aerospatiale and Societe De Construction d'Avions de Tourisme, within 30 days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

* Identical discovery request also served by plaintiff Dennis Jones.

1. That each of the following documents, exhibited with this request, is genuine.

- a. Advertisement No. 1, which appeared in the December 1973 issue of "Flying" magazine.
- b. Advertisement No. 2, which appeared in the November 1977 issue of "Private Pilot" magazine.
- c. Advertisement No. 3, which appeared in the April 1978 issue of "Private Pilot" magazine.
- d. Advertisement No. 4, which appeared in the May 1978 issue of "Private Pilot" magazine.
- e. Advertisement No. 5, which appeared in the November 1978 issue of "Private Pilot" magazine.
- f. Advertisement No. 6, which appeared in the December 1978 issue of "Private Pilot" magazine.
- g. Advertisement No. 7, which appeared in the November 1977 issue of "Flying" magazine.

2. That each of the following statements is true.

- a. That the Defendants, French Corporations, were aware, at and before the time of publishing the advertisements, of the contents and statements contained in the advertisements.
- b. That RALLYE Aircraft Corporation located at 485 Madison Avenue, New York, New York 10022 was, in 1977 and 1978, a New York corporation, incorporated by and was a subsidiary of the Defendant Aerospatiale Company.
- c. That Defendant Aerospatiale Corporation publicly claimed in December 1973 that the RALLYE was "the world's safest . . . STOL plane".
- d. That Defendant Aerospatiale Corporation publicly claimed in November 1977 that the RALLYE aircraft was a STOL aircraft.
- e. That in November 1977 the term "STOL" stood for "short take-off and landing" performance.

f. That the Defendant Aerospatiale Corporation in November 1977 publicly claimed "RALLYE combines the challenge of flying with the safety of an aircraft that 'forgives and forgets'".

g. That Defendant Aerospatiale Corporation publicly claimed in November 1977 that with the RALLYE aircraft "Difficult approaches and short fields are no longer a concern."

h. That Defendant Aerospatiale Corporation in November 1978 publicly claimed that "With RALLYE, even low-time pilots can fly STOL on difficult approaches and short, unprepared landing strips."

LAW OFFICES OF VERNE LAWYER

By /s/ VERNE LAWYER

Verne Lawyer

Fourth Floor Fleming Building

Des Moines, IA 50309

Telephone: (515) 288-2213

-and-

Frank Wattson, Jr.

Seery & Dollar

516 Equitable Bldg.

Des Moines, IA 50309

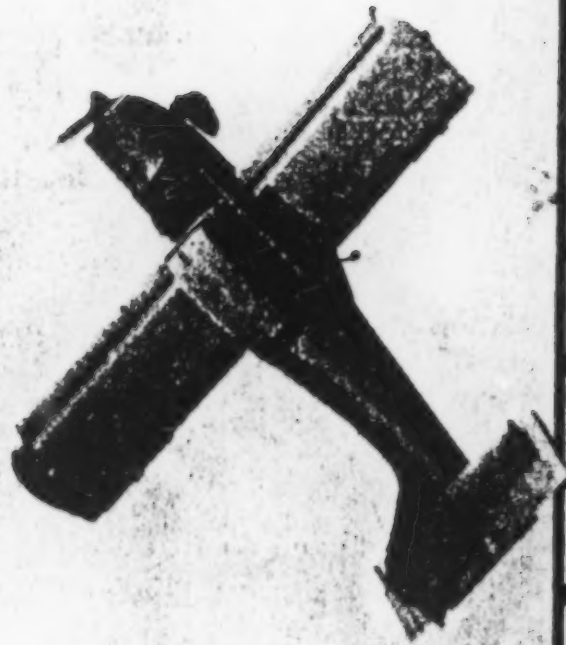
Telephone: (515) 243-3236

Attorneys for Plaintiffs

RALLYE

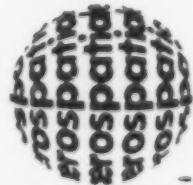
UNMATCHED SAFETY

A-24



With the RALLYE, you really relax. You know you can rely at all times on the automatic movable leading edge slats. Added to these slats, the RALLYE's wide-span slotted flaps make it quite definitely the world's safest and most economical STOL plane.

60 countries have already chosen the RALLYE.



groupe aerospatiale - aviation générale

37, bd de Montmorency - 75781 PARIS Cedex 16 - FRANCE

AEROSPATIALE U.S. DELEGATE :

Robert SOUSSI

c/o AIR CENTER INC., Wiley Post Airport

P.O. Box 32168 OKLAHOMA CITY - OK. 73132

Phone 405 / 789 40 20

SALES AND SERVICE SUPPORT :

HIPAC : Paul C. MITCHELL

P.O. Box 1021 - RUTHERFORDTON, N.C. 28139

Phone 704 / 287 46 54

RALLYE

A-25



STOL Performance...STOL Versatility... STOL Safety

**designed and crafted into every RALLYE model
for sport, aerobatic, training, pleasure and business flying**

"RALLYE sets you free." That's the quick conclusion you come to as you break ground in less than 500 feet on STOL takeoff, knowing that the landing roll is even less. Difficult approaches and short fields are no longer a concern. In flight the antistall, full-span, automatic, leading-edge slats, the slotted Fowler flaps and the generously sized control surfaces endow all RALLYES with exceptional low speed and STOL handling characteristics for maximum safe maneuverability and response.

In short, RALLYE combines the challenge of flying with the safety of an aircraft that "forgives and forgets."

And the RALLYE is a proven aircraft with over 15 years of design refinement for multipurpose adaptability, rugged durability, and operating economy.

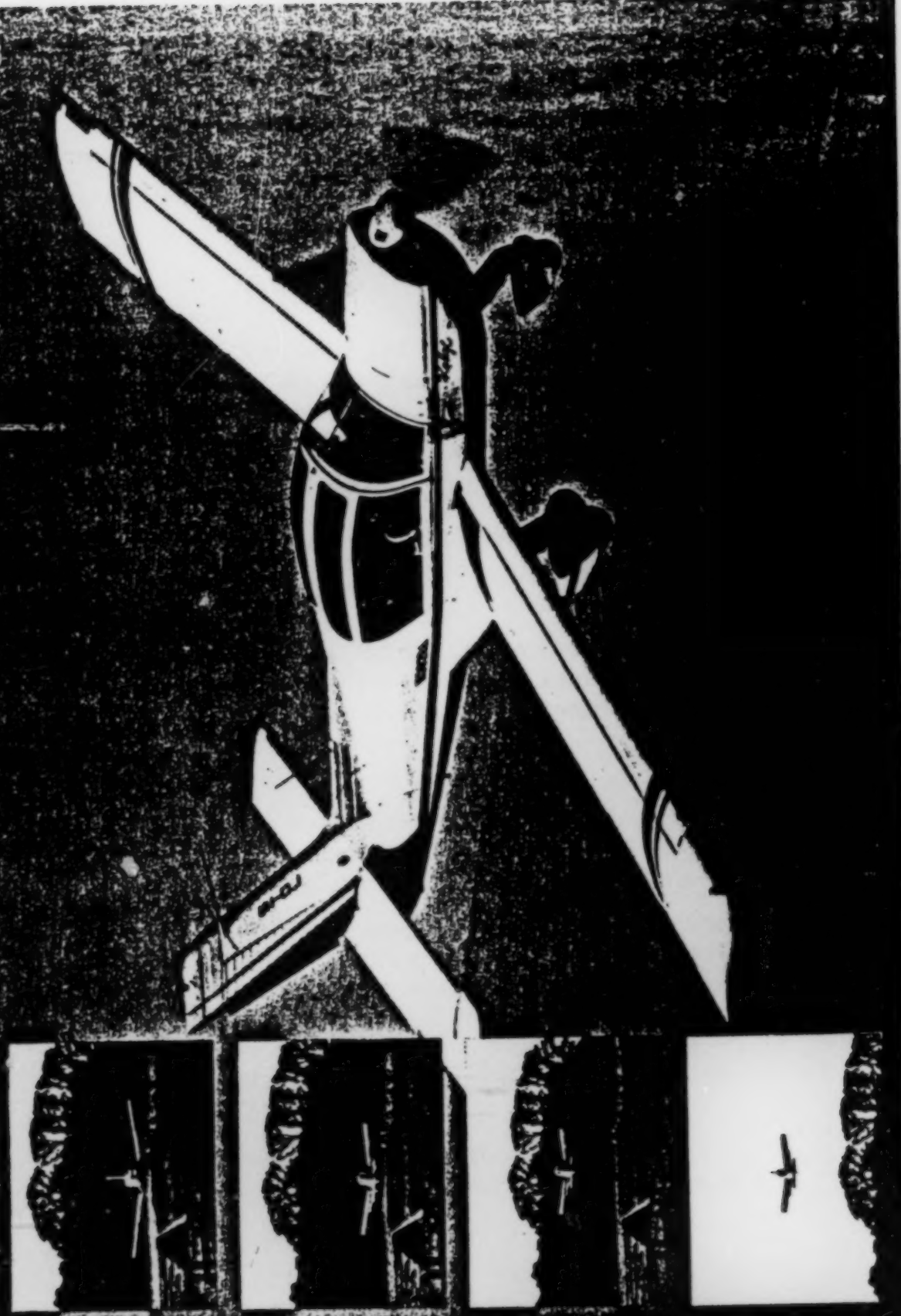
For the name of your nearest RALLYE distributor in our expanding network contact:

RALLYE AIRCRAFT CORPORATION

an AEROSPATIALE company

485 MADISON AVENUE
NEW YORK, NY 10022
PHONE: 212 688-0019





500 feet to freedom

Introducing the 1978 line of RALLYE STOL Aircraft

You are just 500 feet from the most exciting flying experience of your life. For with the RALLYE STOLs for 1978, you need less than 500 feet of take-off roll and even less for landing!

The 1978 RALLYE STOLs bring fun and adventure back to flying. Automatic anti-stall Handley Page leading edge slats, slotted Fowler flaps, and extra-large rudder and elevator provide full control, even at the stall speed. All these features combine to deliver the most breathtaking STOL performance, together with the highest degree of SAFETY to be found in private aviation anywhere in the world today.

Other Special features:

- rugged anti-corrosion treated, all-metal airframe (made by the French manufacturer of CONCORDE)
- reliable U.S. Lycoming engine that powers each RALLYE model
- panoramic sliding canopy which, united with

the low-wing design, provides all-around visibility in every flight configuration.

With a RALLYE, difficult approaches and short, unprepared landing strips are no longer a concern. The aircraft is so easy to fly and so forgiving that even low-time pilots can fly STOL with RALLYE. The RALLYE STOLs truly open a whole new dimension in sport and business flying. Look at these performance specs.

	Take off roll	Landing roll	Cross-wind
RALLYE 150ST	420 ft.	390 ft.	20 kts at 90
RALLYE 1800T	445 ft.	410 ft.	20 kts at 90
RALLYE 2350T	490 ft.	425 ft.	25 kts at 90

That's why, in the last 17 years, one out of every five aircraft owners in Europe has chosen RALLYE!

The RALLYE 150ST, fully spin-certified and equipped with the traditional World War II style stick, is the ideal low-cost multi-purpose workhorse of the professionals in light aviation—for flight train-

ing, aircraft rental, glider and banner towing, aerial surveillance, aerial photography, and more!

The top of the line RALLYE 235GT offers power, luxury, silence and comfort for the most demanding cross-country sport or business flyer. And, with this kind of STOL performance, business flying is all the fun you always wanted it to be.

And backing every feature is something just as important: SERVICE! Our U.S. assembly partner, RALEIGH-DURHAM AVIATION, is now ready to deliver RALLYE parts from its complete spare parts inventory in North Carolina to any point in North America within 48 hours.

Test fly a 1978 RALLYE STOL, and rediscover the adventure of flying. You'll be just 500 feet from freedom.

For more information and the name of your nearest RALLYE dealer, write to:

RALLYE AIRCRAFT CORPORATION
485 Madison Avenue (Suite 206)
New York, New York 10022
or call: toll free (800) 223-0585



Alaska

Ramco
Anchorage, AK (907) 344-2911

California (South)

California Aero Sales
Riverside, CA (714) 689-5021

California (North)

Flying Country Club Marketing, Inc.
San Jose, CA (408) 259-3360

Florida

Chemair Spray Inc.
Palmokee, FL (305) 924-5931

Mississippi

Johnson-Weiss Aviation
Jackson, MS (601) 856-8848

Nevada

Ben Parker Co.
Carson City, NV (702) 882-2133

New England

Kensington Aircraft Ltd., Inc.
Newburyport, MA (617) 462-7070

New Jersey

Teterboro Int'l Aircraft Sales, Inc.
Teterboro, NJ (201) 288-2444

Texas

Everage Enterprises, Inc.
Houston, TX (713) 688-5260

Washington

Fancher Airways
Renton, WA (206) 226-6170

In The United States District Court
For the Southern District of Iowa
Central Division

CV No. 82-453-C

Dennis F. Jones,
Plaintiff,

v.

Societe Nationale Industrielle Aerospatiale,
a French Corporation; and Societe de Construction
d'Avions de Tourisme, a French Corporation,
Defendants.

CV No. 82-615-A

John George and Rosa George,
Plaintiffs,

v.

Seed & Grain Construction Co., an Iowa Corporation;
Dennis Jones, Charles V. Frederick,
Societe Nationale Industrielle Aerospatiale,
a French Corporation,
Defendants.

Second Request for Production Directed to
Societe National Industrielle Aerospatiale and
Societe de Construction d'Avions de Tourisme

COMES NOW the Plaintiff, Dennis F. Jones, and pursuant to Federal Rule of Civil Procedure, request the Defendants, Societe Nationale Industrielle Aerospatiale and Societe De Construction d'Avions De Tourisme, within 30 days after service of this request, to produce the following documents and records for inspection and/or copying by Plaintiff's attorney, 300 Fleming Building, Des Moines, Iowa, to wit:

1. The production flight test records for the subject Rallye aircraft to wit: Rallye MS893E, bearing U.S. registration No. N96088.

2. The aircraft modification/inspection workbook for the subject Rallye aircraft, being Rallye MS893E, bearing U.S. registration No. N96088.
3. The aircraft configuration/inspection workbook for the subject Rallye aircraft, being Rallye MS893E, bearing U.S. registration No. N96088.
4. The aircraft weight and balance worksheet for the subject Rallye aircraft, being Rallye MS893E, bearing U.S. registration No. N90688.
5. The aircraft weight record for the subject Rallye aircraft, being Rallye MS893E, bearing U.S. registration No. N90688.
6. The aircraft weighing record for the subject Rallye aircraft, being Rallye MS893E, bearing U.S. registration No. N90688.
7. The flight test loading report for the Rallye type aircraft manufactured by the Defendants.
8. The operation and inspection records concerning the construction of the subject Rallye aircraft being Rallye MS893E, bearing U.S. registration No. N96088.
9. All inspection squak (sic) sheets for the subject Rallye aircraft being Rallye MS893E, bearing U.S. registration No. N96088.
10. The rejection/disposition reports for the subject Rallye aircraft, being Rallye MS893E, bearing U.S. registration No. N96088.
11. The shortage report and deviation summary for the subject Rallye aircraft, being Rallye MS893E, bearing U.S. registration No. N96088.
12. The index of changes logged and operation and inspection records for the subject Rallye aircraft, being Rallye MS893E, bearing U.S. registration No. N96088.
13. Any other aircraft modification kits (A.M.K's) applicable to the subject aircraft being Rallye MS893E, bearing U.S. registration No. N90688.

14. All appropriate test inspection records (T.I.R.'s) for the Rallye type aircraft.
15. The instrument panel drawing and layout of the instruments for the subject Rallye aircraft, being Rallye MS893E, bearing U.S. registration No. N96088.
16. The design specifications, line drawings and engineering plans and all engineering change orders and plans and all drawings concerning the leading edge slats for the Rallye type aircraft manufactured by the Defendants.
17. The design specifications, line drawings and engineering plans and all engineering change orders and plans and drawings concerning the flaps of the Rallye type aircraft manufactured by the Defendants.
18. AIR 2052 Regulation referred to in the Pilots Operation Manual published by the Defendants for the Rallye type aircraft.
19. The Defendants' "SOCATA service N°-117 referred to in the Defendants' Pilots Operation Manual for the Rallye type aircraft.

WHEREFORE, the Plaintiff, Dennis F. Jones request (sic) the Defendants above named, produce for inspection and/or copying all of the above records and documents at the office of Plaintiff's attorney.

PEDDICORD & WHARTON

/s/ ROLAND D. PEDDICORD

Roland D. Peddicord
Suite 300, Fleming Building
218 Sixth Avenue
Des Moines, Iowa 50309
ATTORNEY FOR
DENNIS F. JONES

In the United States District Court
For the Southern District of Iowa
Central Division

Civil No. 82-453-C Consolidated

Dennis F. Jones,
Plaintiff,

vs.

Societe Nationale Industrielle Aerospatiale,
a French corporation; et al.
Defendants.

Civil No. 82-615-A

John George and Rosa George,
Plaintiffs,

vs.

Seed & Grain Construction Co.,
an Iowa corporation; Dennis Jones;
Charles V. Fredererick (sic);
Societe Nationale Industrielle Aerospatiale,
a French corporation;
and Societe de Construction d'Avions de Tourisme
a French corporation;
Defendants.

Plaintiffs John George and Rosa George's
Interrogatories Directed to Defendants Societe Nationale
Industrielle Aerospatiale
and Societe de Construction d'Avions de Tourisme,
and Each of Them (1st Set)

COME NOW the Plaintiffs, and pursuant to Rule 33 of the Federal Rules of Civil Procedure, hereby file in said case the following interrogatories to be answered under oath by the Defendants, *and each of them*, inasmuch as answer to said interrogatories is necessary to enable these Plaintiffs to adequately prepare for trial. These interrogatories are to be supplemented pursuant to the Federal Rules of Civil Procedure, and if further or different information from answers is available to the Defendants, Defend-

ants' attorney or agent, to whom these interrogatories are directed, such information is requested to be forwarded to the attorneys for the Plaintiffs. Where knowledge or information in possession of a Defendant is requested, such request includes knowledge of the party's agent, representative and, unless privileged, Defendants' attorney.

LAW OFFICES OF VERNE LAWYER

By /s/ VERNE LAWYER

Verne Lawyer
Fourth Floor Fleming Bldg.
Des Moines, IA 50309
Telephone: (515) 288-2213

-and-

Frank Wattson, Jr.
Seery & Dollar
516 Equitable Bldg.
Des Moines, IA 50309
Telephone: (515) 243-3236
Attorneys for Plaintiffs

1. With regard to the advertisement which appeared in the December 1973 issue of "Flying" magazine, identified as Advertisement No. 1 in the Plaintiffs' Request for Admissions Directed to the Defendant French Corporations, please state the following:

a. Is the photograph a composite photograph or "paste-up" photograph?

ANSWER:

If the answer to the proceeding question is in the negative, please state the following:

a. Where was the picture depicted in the advertisement No. 1 taken; that is, at what location in the world.

b. When was the picture depicted in the Advertisement No. 1 taken; that is, what date was it taken.

c. Please state the name and current address of the photographer who took the photograph depicted in Advertisement No. 1.

d. State the name and current address of the pilot who was piloting the aircraft at the time the photograph was taken.

e. Please provide the name of the advertising agency or agencies that were responsible for the preparation of the Advertisement No. 1.

ANSWER:

2. Your attention is directed to the RALLYE ad which appeared in the November 1977 issue of "Flying" magazine and in connection with such ad, please provide:

a. the identity of the person or persons, including the current address, who concocted the words contained in said ad, including the words, but not limited to "Difficult approaches and short fields are no longer a concern".

b. In that connection, please describe in detail and provide the basis for making such a statement and representation; describe the analytical data or the flight tests which were conducted to justify said statement.

c. the identity of the person or persons, including current address, who concocted the words contained in said ad, "In short, RALLYE combines the challenge of flying with the safety of an aircraft that 'forgives and forgets'".

d. In that connection, please describe in detail and provide the basis for the making of said statement and representation; describe the analytical data or the flight tests which were conducted to justify the statement "an aircraft that 'forgives and forgets'".

ANSWER:

3. Your attention is directed to the RALLYE ad which appeared in the April 1978 issue of "Flying" magazine and in connection with such ad, please provide:

- a. the identity of the person or persons, including the current address, who wrote the words contained in said ad, and
- b. In that connection, please describe the analytical data, other data or flight tests which were performed to justify the statement "All these features combine to deliver the most breathtaking STOL performance, together with the highest degree of SAFETY to be found in private aviation anywhere in the world today."
- c. the identity of the person or persons, including current address, who concocted the words contained in said ad, "The aircraft is so easy to fly and so forgiving that even low-time pilots can fly STOL with RALLYE."
- d. In that connection, please describe in detail the analytical data or test flight results which you say justify the making of such public statement and representations.

ANSWER: _____

4. Please provide the identity of the person or persons who concocted the words "The RALLYE STOLs truly open a whole new dimension in sport and business flying. Look at these performance specs:

	Take off roll	Landing roll	Crosswind
RALLYE 180 GT.....	445 feet	410 feet	20 kts at 90 feet

In that connection, please provide:

- a. a complete description of the analytical data which was used to justify such representation or the flight test results which you say justify making such representation; and further provide:
- b. the serial number of the aircraft used, if indeed one was used, in conducting flight tests which you say justify making this statement:
- c. the gross weight of the aircraft used in conducting such flight tests;
- d. the name or names of the pilots who flew the flight test or tests;
- e. the mean sea level altitude of the airport from which such flight tests were conducted:
- f. the temperature at which such flight tests were conducted; and
- g. describe in detail the test data which you say justifies the making of the statement as contained in said advertisement.

ANSWER:

In the United States District Court
for the Southern District of Iowa
Central Division

Civil No. 82-453-C
Consolidated

Dennis F. Jones,
Plaintiff,

vs.

Societe Nationale Industrielle Aerospatiale,
a French corporation; et al.
Defendants.

Civil No. 82-615-A

John George and Rosa George,
Plaintiffs,

vs.

Seed & Grain Construction Co.,
an Iowa corporation; Dennis Jones; Charles V. Fredererick;
Societe Nationale Industrielle Aerospatiale,
a French corporation;
and Societe de Construction d'Avions de Tourisme,
a French corporation;
Defendants.

Plaintiffs John George and Rosa George's Second Set of
Request for Admissions Directed to Defendants Societe
Nationale Industrielle Aerospatiale and Societe de Construction
d'Avions de Tourisme

COME NOW Plaintiffs John George and Rosa George and
pursuant to Federal Rule of Civil Procedure 36 request the
defendants Societe Nationale Industrielle Aerospatiale and So-
ciete de Construction d'Avions de Tourisme, within 30 days after
service of this request to make the following admissions for the
purpose of this action only and subject to all pertinent objections
to admissibility which may be interposed at the trial:

1. That each of the following documents, exhibited with this
request, is genuine.

- a. Advertisement No. 8, which appeared in the March 1978 issue of "Pilot" Magazine.
 - b. Advertisement No. 9, which appeared in the June 1978 issue of "Pilot" Magazine.
 - c. Advertisement No. 10, which appeared in the October 1978 issue of "Pilot" Magazine.
 - d. Advertisement No. 11, which appeared in the December 1978 issue of "Pilot" Magazine.
 - e. Advertisement No. 12, which appeared in the March 1979 issue of "Pilot" Magazine.
 - f. Advertisement No. 13, which appeared in the April 1979 issues of "Flying" Magazine.
2. That each of the following statements is false.
- a. "RALLYE lengthens the runway—automatically."
 - b. "RALLYE lowers the temperature—automatically".
 - c. "RALLYE lightens the load—automatically".

LAW OFFICES OF VERNE LAWYER

By /s/ VERNE LAWYER

Verne Lawyer
Fourth Floor Fleming Building
Des Moines, IA 50309
Telephone: (515) 288-2213

-and-

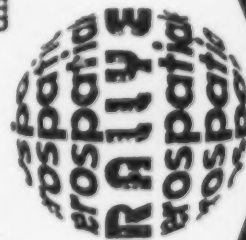
Frank Watson, Jr.
Seery & Dollar
516 Equitable Bldg.
Des Moines, IA 50309
Telephone: (515) 243-3236
Attorneys for Plaintiffs



RALLYE
*lengthens the runway,
 lowers the temperature and
 lightens the load.
 Automatically.*

Rallye expands your horizons when you need it most: hot days, short field, airplane loaded to gross weight. And while the high performance characteristics of the Rallye may not be part of your everyday flight plan, the roomy, four place luxury makes it an ideal business tool. The 150 MPH cruise makes it a real cross country machine. And the sleek good looks will turn heads when you get there. Here, at last, is a STOL aircraft that's not a compromise.

When you have to get up in a hurry, get there in a hurry and get down in a hurry, there's just one answer - Rallye! Because the high performance STOL features are there when you need them - the full-span leading edge slats deploy automatically when the angle of attack is high enough, then retract silently when it decreases. Rallye - the cross country airplane that expands your horizons when you need it most. For more information and the name of your nearest dealer, call us, toll free: 800-334-5870.



RALLYE AIRCRAFT CORPORATION

Rt. 1, Box 484B Morrisville, North Carolina 27560

North Carolina residents phone 919/781-5600

CIRCLE NO. 137 ON READER SERVICE CARD